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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,816	04/13/2001	Andrais O'Callaghan	AP104TP	8680

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EXAMINER

TUCKER, WESLEY J

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/834,816

Applicant(s)

O'CALLAGHAN, ANDRAIS

Examiner

Wes Tucker

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: 413 FOR M.


**VIKKRAM BALI
PRIMARY EXAMINER**

Continuation of 3. NOTE: Applicant has amended claim 55 to include new limitations changing the scope of the claim. .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant has submitted arguments with regard to independent claims 1 and 33. The content of the arguments are well documented in the Applicants response and are the same arguments presented in the telephone interview in regard to the previously presented final rejection.

The Applicants arguments are focused on the amount of luminance or intensity value reduction performed on the pupil region of a detected red eye and the bordering pixels of said pupil red eye region in the previously cited passage in the reference to U.S. Patent 5,748,764 to Benati. The Examiner has interpreted the phrase from column 8, lines 63-66 stating "At this point, the luminance channel is multiplied by a factor of 0.35 in order to reduce the lightness of the pixel's neutral value" to mean that the pixels luminance value is reduced or darkened by a factor of 0.35. The justification for this interpretation comes from the passage at column 9, lines 8-12 which reads "Border correction is performed on border pixels... Such pixels are ONLY darkened by a 0.15 factor." It is exceedingly clear to the Examiner that a border correction is performed that is less severe than the pupil correction with respect to the amount of darkening performed. If it were interpreted in the reverse (as the Applicant wants to interpret it) to have the pupil pixels which are very bright reduced to 35% of their initial luminance and the bordering pixels (which by their nature are interpreted as already being darker than the pupil pixels) to be reduced to 15% of their initial luminance, what would result would be a very dark line around the pupil resulting in an unsightly image.

The Examiner chooses to interpret the disclosure of Benati as one of ordinary skill in the art would in order to achieve the more favorable result in image processing. The way Benati (as interpreted by the Examiner) is performing the border correction is almost identical in nature to the method being performed by the presently claimed invention. In the Applicants specification on page 10 lines 19 and 20 it is taught that the border pixels "would look bad if they were darkened too much." Examiner points out that this only strengthens the reasons for the interpretation of Benati previously presented in the final rejection. It would be unreasonable to interpret Benati in the opposite. There is no apparent reason for Benati to perform an operation to remove red eye that produces an unsightly dark ring around the pupil.

Further in the applicants specification on page 10, lines 25 to 31 it is disclosed that "the replacement pixels are given gray values equal to 0.6 and 0.9 times their original brightness." This sounds like a comparable ratio to the 0.35 and 0.15 ratio of darkening presented by Benati. In fact as interpreted by the Examiner this would result in border pixels with effective grey values of 0.65 and 0.85 times their original brightness. This is so strikingly similar to the values offered by Applicants specification, that it appears that these ratios are exceedingly well known in the art to give the best effective darkening of red eye pixels.

It is also noted that Applicant makes a remark about the result of the Benati method given the Examiner's interpretation. The remark can be found at the top of page 22 just before luminary definitions of the terms "factor" and "scale factor." Applicant is advised that this logic applies directly to the present specification as well on page 10, lines 28-31. The remarks made with regard to claim 55 have not been addressed because the claim has been amended to change the scope. The Final Rejection is accordingly maintained.